

AMENDED IN SENATE MAY 2, 2006  
AMENDED IN SENATE APRIL 20, 2006  
AMENDED IN SENATE APRIL 6, 2006

**SENATE BILL**

**No. 1650**

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**Introduced by Senators Kehoe and Dunn**

February 24, 2006

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An act to amend Section 1263.510 of, and to add Sections 1245.245 and 1263.615 to, the Code of Civil Procedure, relating to eminent domain.

LEGISLATIVE COUNSEL'S DIGEST

SB 1650, as amended, Kehoe. Eminent domain.

Existing law requires the governing body of a public entity to adopt a resolution of necessity, as specified, and send related notices before commencing an eminent domain proceeding. Existing law provides that an owner of property taken by eminent domain is entitled to compensation, including compensation for goodwill.

This bill would require the governing body of a public entity, before the public entity may use property that is subject to a resolution of necessity, as specified, for a public use other than the public use stated in the resolution to adopt a resolution authorizing a different use of the property by a vote of at least 2/3 of all members of the governing body of the public entity or a greater vote as required by statute, charter, or ordinance. The bill would also require a public entity to sell property that is not used for the public use stated in the resolution within 10 years of the adoption of the resolution unless the governing body adopts a resolution authorizing a different use or reauthorizing the existing stated public use by a vote as described above. The bill would

~~provide that~~ *require* specified property subject to the new resolution procedure *to* be offered back to the original owner or owners of the property, subject to certain requirements, if the public entity fails to adopt a new resolution or a resolution reauthorizing the stated public use, *and that property was not used for the public use stated in the original resolution of necessity or a new resolution authorizing a different use or reauthorizing the existing stated public use between the time of the property's acquisition and the time of the public entity's failure to adopt a new resolution.* The bill would require the Department of Housing and Community Development to provide specified information to a public entity in connection with property that is a single-family residence.

This bill would also require a public entity acquiring property under specified circumstances to offer the owner of the property a one-year leaseback agreement for that property owner's continued use, subject to the property owner's payment of fair market rents and compliance with other specified conditions, unless the public entity states in writing that the development, *redevelopment, or use* of the property is scheduled to begin within two years of its acquisition. With regard to the calculation of compensation for the property taken, the bill would prohibit additional goodwill value from accruing during the leaseback.

The bill would apply prospectively, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1245.245 is added to the Code of Civil  
2     Procedure, to read:  
3     1245.245. (a) Property acquired by a public entity by any  
4     means set forth in subdivision (e) that is subject to a resolution of  
5     necessity adopted pursuant to this article shall only be used for  
6     the public use stated in the resolution unless the governing body  
7     of the public entity adopts a resolution authorizing a different use  
8     of the property by a vote of at least two-thirds of all members of  
9     the governing body of the public entity, or a greater vote as  
10    required by statute, charter, or ordinance. The new resolution  
11    shall contain all of the following:  
12    (1) A general statement of the new public use that is proposed  
13    for the property and a reference to the statute that would have

1 authorized the public entity to acquire the property by eminent  
2 domain for that use.

3 (2) A description of the general location and extent of the  
4 property proposed to be used for the new use, with sufficient  
5 detail for reasonable identification.

6 (3) A declaration that the governing body has found and  
7 determined each of the following:

8 (A) The public interest and necessity require the proposed use.

9 (B) The proposed use is planned and located in the manner  
10 that will be most compatible with the greatest public good and  
11 least private injury.

12 (C) The property described in the resolution is necessary for  
13 the proposed use.

14 (b) Property acquired by a public entity by any means set forth  
15 in subdivision (e) that is subject to a resolution of necessity  
16 pursuant to this article, and is not used for the public use stated in  
17 the resolution of necessity within 10 years of the adoption of the  
18 resolution of necessity, shall be sold in accordance with the terms  
19 of subdivisions (f) to (h), inclusive, unless the governing body  
20 adopts a resolution according to the terms of subdivision (a) or a  
21 resolution according to the terms of this subdivision  
22 reauthorizing the existing stated public use of the property by a  
23 vote of at least two-thirds of all members of the governing body  
24 of the public entity or a greater vote as required by statute,  
25 charter, or ordinance. A reauthorization resolution under this  
26 subdivision shall contain all of the following:

27 (1) A general statement of the public use that is proposed to be  
28 ~~authorized or~~ reauthorized for the property and a reference to the  
29 statute that authorized the public entity to acquire the property by  
30 eminent domain for that use.

31 (2) A description of the general location and extent of the  
32 property proposed to be used for the public use, but not yet in use  
33 for the public use, with sufficient detail for reasonable  
34 identification.

35 (3) A declaration that the governing body has found and  
36 determined each of the following:

37 (A) The public interest and necessity require the proposed use.

38 (B) The proposed use is planned and located in the manner  
39 that will be most compatible with the greatest public good and  
40 least private injury.

1 (C) The property described in the resolution is necessary for  
2 the proposed use.

3 (c) In addition to any notice required by law, the notice  
4 required for a new or reauthorization resolution sought pursuant  
5 to subdivision (a) or (b) shall comply with the requirements of  
6 Section 1245.235 and shall be sent to each person who was given  
7 notice required by Section 1245.235 in connection with the  
8 original acquisition of the property by the public entity.

9 (d) Any judicial review of an action pursuant to subdivision  
10 (a) or (b) shall be governed by Section 1245.255.

11 (e) The following property acquisitions are subject to the  
12 requirements of this section:

13 (1) Any acquisition by a public entity pursuant to eminent  
14 domain.

15 (2) Any acquisition by a public entity following adoption of a  
16 resolution of necessity pursuant to this article for the property.

17 (3) Any acquisition by a public entity prior to the adoption of  
18 a resolution of necessity pursuant to this article for the property,  
19 but subsequent to a written notice that the public entity may take  
20 the property by eminent domain.

21 (f) If the public entity fails to adopt either a new resolution  
22 pursuant to subdivision (a) or a reauthorization resolution  
23 pursuant to subdivision (b), as required by this section, *and that*  
24 *property was not used for the public use stated in a resolution of*  
25 *necessity adopted pursuant to this article or a resolution adopted*  
26 *pursuant to subdivision (a) or (b) between the time of its*  
27 *acquisition and the time of the public entity's failure to adopt a*  
28 *resolution pursuant to subdivision (a) or (b),* the public entity  
29 shall offer the original owner or owners of the property the right  
30 of first refusal to purchase the property at the present fair market  
31 value, as determined by independent, licensed appraisers, except  
32 as provided in subdivision (g).

33 (g) If the public entity fails to adopt either a new resolution  
34 pursuant to subdivision (a) or a reauthorization resolution  
35 pursuant to subdivision (b) for a property that is a single-family  
36 residence, as required by this section, *and that property was not*  
37 *used for the public use stated in a resolution of necessity adopted*  
38 *pursuant to this article or a resolution adopted pursuant to*  
39 *subdivision (a) or (b) between the time of its acquisition and the*  
40 *time of the public entity's failure to adopt a resolution pursuant*

1 *to subdivision (a) or (b)*, the public entity shall offer the original  
 2 owner or owners of the property the right of first refusal to  
 3 purchase the property at an affordable price, which price shall not  
 4 be greater than the price paid by the agency for the original  
 5 acquisition, adjusted for inflation, and shall not be greater than  
 6 fair market value, if the following requirements are met:

7 (1) The original owner or owners certify their income to the  
 8 public entity as persons or families of low or moderate income.

9 (2) If the single-family residence is offered at a price that is  
 10 less than fair market value, the public entity may verify such  
 11 certifications of income in accordance with procedures used for  
 12 verification of incomes of purchasers and occupants of housing  
 13 financed by the California Housing Finance Agency.

14 (3) If the single-family residence is offered at a price that is  
 15 less than fair market value, the public entity shall impose terms,  
 16 conditions, and restrictions to assure that the residence will  
 17 remain available to persons or families of low or moderate  
 18 income and households with incomes no greater than the incomes  
 19 of the present occupants in proportion to the area median income.  
 20 The Department of Housing and Community Development shall  
 21 provide to the public entity recommendations of standards and  
 22 criteria for those prices, terms, conditions, and restrictions.

23 (h) If the original owner of a property does not choose to  
 24 purchase the property as provided in subdivisions (f) and (g) of  
 25 this section, *or if the public entity fails to adopt a resolution as*  
 26 *required pursuant to subdivision (a) or (b) but is not required to*  
 27 *offer a right of first refusal pursuant to subdivision (f) or (g)*, the  
 28 public entity shall sell the property as surplus property pursuant  
 29 to Article 8 (commencing with Section 54220) of Chapter 5 of  
 30 Division 2 of Title 5 of the Government Code.

31 (i) If residential property acquired by a public entity by any  
 32 means set forth in subdivision (e) is sold as surplus property  
 33 pursuant to subdivision (h), and that property was not used for  
 34 the public use stated in a resolution of necessity adopted pursuant  
 35 to this article or a resolution adopted pursuant to subdivisions (a)  
 36 or (b) between the time of its acquisition and the time of its sale  
 37 as surplus property, the public entity shall pay to the original  
 38 owner the sum of any financial gain between the original  
 39 acquisition price, adjusted for inflation, and the final sale price.

(j) Upon completion of any acquisition described in subdivision (e) or upon the adoption of a resolution of necessity pursuant to this section, whichever is later, the public entity shall give written notice to the owners or former owners of the properties acquired as described in subdivision (e) stating that the notice, right of first refusal, and return of financial gain rights discussed in this section may accrue.

SEC. 2. Section 1263.510 of the Code of Civil Procedure is amended to read:

1263.510. (a) The owner of a business conducted on the property taken, or on the remainder if the property is part of a larger parcel, shall be compensated for loss of goodwill if the owner proves all of the following:

(1) The loss is caused by the taking of the property or the injury to the remainder.

(2) The loss cannot reasonably be prevented by a relocation of the business or by taking steps and adopting procedures that a reasonably prudent person would take and adopt in preserving the goodwill.

(3) Compensation for the loss will not be included in payments under Section 7262 of the Government Code.

(4) Compensation for the loss will not be duplicated in the compensation otherwise awarded to the owner.

(b) Within the meaning of this article, “goodwill” consists of the benefits that accrue to a business as a result of its location, reputation for dependability, skill or quality, and any other circumstances resulting in probable retention of old or acquisition of new patronage.

(c) If the public entity and the owner enter into a leaseback agreement pursuant to Section 1263.615, the following shall apply:

(1) No additional goodwill shall accrue during the lease.

(2) The entering of a leaseback agreement shall not be a factor in determining goodwill. Any liability for goodwill shall be established and paid at the time of acquisition of the property by eminent domain or subsequent to notice that the property may be taken by eminent domain.

SEC. 3. Section 1263.615 is added to the Code of Civil Procedure, to read:

1 1263.615. (a) A public entity shall offer a one-year leaseback  
2 agreement to the owner of a property to be acquired by any  
3 method set forth in subdivision (b) for that property owner's  
4 continued use of the property upon acquisition, subject to the  
5 property owner's payment of fair market rents and compliance  
6 with other conditions set forth in subdivision (c), unless the  
7 public entity states in writing that the development—~~or~~  
8 ~~redevelopment~~, *redevelopment*, *or use* of the property for its  
9 stated public use is scheduled to begin within two years of its  
10 acquisition. This section shall not apply if the public entity states  
11 in writing that a leaseback of the property would create or allow  
12 the continuation of a public nuisance to the surrounding  
13 community.

14 (b) The following property acquisitions are subject to the  
15 requirements of this section:

16 (1) Any acquisition by a public entity pursuant to eminent  
17 domain.

18 (2) Any acquisition by a public entity following adoption of a  
19 resolution of necessity pursuant to Article 2 (commencing with  
20 Section 1245.210) of Chapter 4 for the property.

21 (3) Any acquisition by a public entity prior to the adoption of  
22 a resolution of necessity pursuant to Article 2 (commencing with  
23 Section 1245.210) of Chapter 4 for the property, but subsequent  
24 to a written notice that the public entity may take the property by  
25 eminent domain.

26 (c) The following conditions shall apply to any leaseback  
27 offered pursuant to this section:

28 (1) The lessee shall be responsible for any additional waste or  
29 nuisance on the property, and for any other liability arising from  
30 the continued use of the property.

31 (2) The lessor may demand a security deposit to cover any  
32 potential liability arising from the leaseback. The security deposit  
33 shall be reasonable in light of the use of the leased property.

34 (3) The lessor shall be indemnified from any legal liability and  
35 attorney's fees resulting from any lawsuit against the lessee or  
36 lessor, arising from the operation of the lessee's business or use  
37 of the property.

38 (4) The lessor shall require the lessee to carry adequate  
39 insurance to cover potential liabilities arising from the lease and

1 use of the property, and shall require that insurance to name the  
2 lessor as an additional insured.

3 (5) Additional goodwill shall not accrue during any lease.

4 (6) The lessee shall be subject to unlawful detainer  
5 proceedings as provided by law.

6 (d) A public entity shall offer to renew a leaseback agreement  
7 for one-year terms, subject to any rent adjustment to reflect  
8 inflation and upon compliance with other conditions set forth in  
9 subdivision (c), unless the public entity states in writing that the  
10 development—~~or redevelopment~~, *redevelopment*, or use of the  
11 property for its stated public use is scheduled to begin within two  
12 years of the termination date of the lease. At least 60 days prior  
13 to the lease termination date, the public entity lessor shall either  
14 offer a one-year renewal of the lease or send a statement  
15 declaring that the lease will not be renewed because the  
16 development—~~or redevelopment~~, *redevelopment*, or use of the  
17 property is scheduled to begin within two years of the lease  
18 termination date. The lessee shall either accept or reject a lease  
19 renewal offer at least 30 days prior to the lease termination date.  
20 The lessee's failure to accept a renewal offer in a timely manner  
21 shall constitute a rejection of the renewal offer. A lessor's failure  
22 to offer a renewal or give the notice as required shall extend the  
23 lease term for 60 day increments until an offer or notice is made,  
24 and if a notice of termination is given after the lease termination  
25 date, the lessee shall have no less than 60 days to vacate the  
26 property. A lessee's failure to accept within 30 days a renewal  
27 offer made subsequent to the lease termination date shall  
28 constitute a rejection of the offer.

29 (e) A party who holds over after expiration of the lease shall  
30 be subject to unlawful detainer proceedings and shall also be  
31 subject to the lessor for holdover damages.

32 (f) A leaseback entered into pursuant to this section shall not  
33 affect the amount of compensation otherwise payable to the  
34 property owner for the property to be acquired.

35 SEC. 4. This act shall apply prospectively and shall apply to  
36 property acquired after January 1, 2007.